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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

LINKAGE FINANCIAL GROUP, INC., Plaintiff and Appellant, v. SYLVIA HU, Defendant and Respondent.	B288556 Los Angeles County Super. Ct. No. BC625659

APPEAL from a postjudgment order of the Superior Court of Los Angeles County, Rafael A. Ongkeko, Judge. Affirmed.

Neufeld Marks, Paul S. Marks and Erin E. Brady for Plaintiff and Appellant.

Law Offices of John J. Ma and John J. Ma for Defendant and Respondent.

INTRODUCTION

Plaintiff Linkage Financial Group, Inc. (Linkage) appeals from an order setting aside and vacating a default and default judgment entered against defendant Sylvia Hu. We affirm.

FACTS AND PROCEDURAL BACKGROUND

1. *Underlying action and entry of default and default judgment*

Hu borrowed money from Linkage through four different loan agreements made from about 2012 to 2014. The principal amounts of the loans were: (1) BL133011: $240,000, the subject of the underlying lawsuit (BL133011 loan); (2) BL131603: $50,000; (3) BL120511: $150,000; and (4) BL143604: $310,000. Hu borrowed the $240,000 under the BL133011 loan on November 14, 2013. The loan matured on November 15, 2014.

On June 30, 2016—more than a year and a half after the BL133011 loan matured—Linkage sued Hu and her company Shin Fu Far Corp. to recover the $240,000 principal plus accrued interest.[1] Linkage filed two proofs of service of summons showing that on July 6, 2016, a registered process server personally served Hu with the summons, complaint, and other documents in her individual capacity and as agent for service of process for Shin Fu Far.

Hu and Shin Fu Far did not file responsive pleadings. At Linkage's request, the court clerk entered Hu's and Shin Fu Far's defaults on August 30, 2016. Linkage served Hu with its requests for default by mail.

Linkage did not seek a default judgment against Hu for another five months, until February 2017. In support of its request for entry of default judgment, Linkage submitted the

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[1] Linkage sued Hu for breach of contract and open book account and Shin Fu Far as guarantor of the BL133011 loan.

declarations of Linkage's president Frank I. Min Jwong and its attorney, as well as the BL133011 loan documentation and an accounting of amounts due, among other documents. At the same time, Linkage requested dismissal of Shin Fu Far. The dismissal was entered March 16, 2017. That same day the court entered judgment against Hu in the total amount of $263,927.35.[2] On March 30, 2017, Linkage served Hu notice of entry of judgment by mail.

On August 1, 2017, Linkage obtained an order requiring Hu to appear on October 30, 2017 for a judgment debtor examination. Two months later, it had the order personally served on Hu on October 15, 2017. According to Hu, it is at that point that she first learned of the default judgment entered against her.

2. *Hu's motion to vacate the default judgment*

Hu filed a motion to vacate the default judgment and have the case dismissed on December 7, 2017. In her supporting declaration, she declared she received a copy of the summons and complaint in October 2016. At that time, she was working with California International Bank, N.A. (CIB) to borrow $2,375,000 through one of her companies to pay off several existing loans, including the four loans she owed to Linkage. She declared she contacted Jwong, told him her new loan was ready to close escrow, and asked him to submit "all of [Linkage's] loan[ ] claims to the escrow so that they would be fully paid off at the funding of the new loan." (Emphasis omitted.) Hu said she "specifically told

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[2] That total includes the $240,000 principal loan amount, $3,886.67 in interest accrued through February 6, 2017, $2,786.54 in interest accrued from February 6, 2017 through March 6, 2017, a $12,194.33 late charge fee, $4,450.81 in attorney fees, and costs of $609.00.

Mr. Jwong that once this $240,000 loan under this lawsuit was fully paid off, Linkage should have this . . . [a]ction dismissed with prejudice. Mr. Jwong agreed and promised to dismiss this action after Linkage's total claims were paid off from my new loan."

Hu declared she trusted Jwong because he had made several loans to her before, and she had hired his wife as her assistant and bookkeeping clerk. She said she did not file an answer to defend the lawsuit because of this trust.

Jwong contradicted Hu's account of this conversation in his declaration. He declared Hu asked him to exclude the $240,000 loan amount from Linkage's loan claims because she was concerned CIB "would not make [a] new loan if the additional payoff of the $240,000 loan was included." According to Jwong, Hu "promised" him she would pay the unpaid balance of the BL133011 loan "separately."

Hu does not speak or read English. She spoke with Jwong and speaks to her attorney in Mandarin Chinese. Her attorney prepared her declaration in English and then reviewed it with Hu in Mandarin Chinese.[3] When Hu received "tax, financial or legal documents" in the mail, she would give them to Jwong's wife "to translate a summarized content" for her and file the documents in Hu's business files.

Hu declared she first learned Linkage had obtained a default judgment against her in October 2017 when someone delivered "a court paper" to her. She asked Jwong's wife what it was and she told Hu it was a subpoena for her to appear in court for a judgment debtor's examination. Hu declared she believed the debt for which Linkage had obtained its judgment already

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[3] At least, Hu declared her attorney did so for her reply declaration.

had been paid in full in December 2016. (Linkage was paid $718,106.42 on December 15, 2016, when escrow closed on the CIB loan.)

Hu declared she "recall[s] now that in April of 2017, I received in [the] mail a court document concerning this lawsuit. I thought it should be the dismissal of this action, and I gave it to [Jwong's wife] for record filing. I do not recall that [she] had ever told me that the document was a Notice of Entry of Default Judgment against me in this action." After receiving the subpoena, Hu "immediately" hired an attorney and began to collect her business records to file her motion to vacate the default and default judgment.

The court heard Hu's motion on January 25, 2018. The court granted Linkage's request for judicial notice and sustained Linkage's evidentiary objections to Hu's declaration. After hearing argument, the court granted Hu's motion "based on the evidence present[ed] in the argument this date." The court set aside and vacated the default judgment entered against Hu on March 16, 2017, and the default entered against her on August 30, 2016. At Linkage's request, the court vacated the default and dismissal entered against the guarantor Shin Fu Far. The court deemed Hu's answer filed and set the case for trial. Linkage served notice of entry of the order on March 2, 2018, and filed a timely notice of appeal from the order the same day.

DISCUSSION

1. *Applicable law and standard of review*

Under Code of Civil Procedure[4] section 473, subdivision (b), a default judgment may be set aside by a motion made within six months after entry of the default. (*Manson, Iver & York v. Black* (2009) 176 Cal.App.4th 36, 42 (*Manson*).) After the six-month statutory period has expired, "the court may still grant relief on equitable grounds, including extrinsic fraud or mistake," provided the party "demonstrate[s] diligence in seeking to set aside the default once it was discovered." (*Id.* at pp. 47, 49.) "When a default *judgment* has been obtained, equitable relief may be given only in exceptional circumstances." (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 981 (*Rappleyea*).) A party may move to set aside a default judgment on the ground it is facially void at any time. (§ 473, subd. (d); *Manson,* at p. 43.)

We review an order on a motion to vacate a default and set aside a default judgment for an abuse of discretion whether brought under section 473 or equitable grounds. (*Rappleyea v. Campbell*, *supra*, 8 Cal.4th at p. 981.) "The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason. When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court." (*Shamblin v. Brattain* (1988) 44 Cal.3d 474, 478-479.) "[W]e will not disturb the trial court's factual findings where . . . they are based on substantial evidence. It is the province of the trial court to determine the credibility of the declarants and to weigh the evidence." (*Falahati v. Kondo* (2005) 127 Cal.App.4th 823, 828.)

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[4] All further statutory references are to the Code of Civil Procedure.

A judgment or order challenged on appeal is presumed to be correct, and "it is the appellant's burden to affirmatively demonstrate error." (*People v. Sanghera* (2006) 139 Cal.App.4th 1567, 1573.) "All intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown." (*Denham v. Superior Court of Los Angeles County* (1970) 2 Cal.3d 557, 564.) In the absence of a reporter's transcript " '[w]e must . . . presume that what occurred at that hearing supports the judgment.' " (*In re Marriage of Obrecht* (2016) 245 Cal.App.4th 1, 8-9; see also *State Farm Fire & Casualty Co. v. Pietak* (2001) 90 Cal.App.4th 600, 610 [presuming order denying motion for relief under section 473 "based on any rationale supported by the record" in the absence of a reporter's transcript].)

2. *The court did not abuse its discretion*

a. *Hu's motion to vacate also was based on equitable grounds*

Linkage contends Hu's motion sought to vacate the default judgment only on the ground it was void. It argues Hu's motion—and the trial court's authority to rule on it—was limited by Hu's notice of motion, which states Hu will move the court for an order setting aside the default judgment as it "is void because the underlying debt was already paid off before the default judgment was entered." However, in her points and authorities, on which the motion also was based, Hu mentioned the court's ability to grant relief on equitable grounds. She argued "the default judgment was obtained through deceptive and fraudulent misconduct."

"An omission in the notice may be overlooked if the supporting papers make clear the grounds for the relief sought." (*Luri v. Greenwald* (2003) 107 Cal.App.4th 1119, 1125.) That Hu's supporting papers made clear she also sought relief on

equitable grounds is supported by Linkage's recognition of the point in its opposition to the motion. It argued Hu could not "show the exceptional circumstances required for equitable relief from a default judgment." It then acknowledged, "[Hu] argues that relief should be granted for extrinsic fraud" and went on to argue she failed to establish the existence of any extrinsic fraud.

We do not have the benefit of a reporter's transcript to know what the parties argued at the hearing on Hu's motion. Based on the record, we conclude the trial court was not limited to granting relief on Hu's contention the default judgment was void, but also could rule on equitable grounds. Because we conclude the court did not abuse its discretion in granting the motion on equitable grounds, we need not determine if the judgment was void.

b. *Substantial evidence supports the court's implied finding of extrinsic fraud or mistake*

As we have said, a court may grant relief from a default and default judgment based on equitable grounds, including extrinsic fraud or mistake. " 'Extrinsic fraud usually arises when a party is denied a fair adversary hearing because he has been "deliberately kept in ignorance of the action or proceeding, or in some other way fraudulently prevented from presenting his claim or defense." ' [Citation.] It occurs when ' "the unsuccessful party has been prevented from exhibiting fully his case, by fraud or deception practiced on him by his opponent, as by keeping him away from court, *a false promise of a compromise*; or where the defendant never had knowledge of the suit, being kept in ignorance by the acts of the plaintiff." ' " (*Manson, supra*, 176 Cal.App.4th at p. 47, italics added.) "Extrinsic mistake occurs 'when circumstances extrinsic to the litigation have unfairly cost a party a hearing on the merits.' [Citation.] In contrast with extrinsic fraud, extrinsic mistake exists when the ground of relief

is not so much the fraud or other misconduct of one of the parties as it is the excusable neglect of the defaulting party to appear and present his claim or defense. If that neglect results in an unjust judgment, without a fair adversary hearing, the basis for equitable relief on the ground of extrinsic mistake is present." (*Ibid.*)

Because equitable relief is available only in "exceptional circumstances" once a default judgment has been entered, courts require the parties seeking relief to articulate a satisfactory excuse for not presenting a defense, to demonstrate they have a meritorious case, and to demonstrate diligence in seeking to set aside the default once discovered. (See e.g., *Gibble v. Car-Lene Research, Inc.* (1998) 67 Cal.App.4th 295, 315.)

Here, substantial evidence supports the trial court's implied finding the default judgment was entered due to extrinsic fraud or mistake. As Linkage notes, it did not keep Hu in the dark about the existence of its lawsuit against her—it served her with the complaint, request for entry of default, and entry of default judgment. But, the court could conclude that either Linkage intentionally kept Hu from defending the lawsuit through a false promise of compromise—that Hu had satisfied her debt through the CIB loan payout—or that Hu's failure to appear was based on her excusable mistake that she had paid her debt to Linkage and Linkage thus had dismissed the lawsuit. Either ground supports an implied finding that Hu had a satisfactory excuse for not presenting a defense in the action.

The evidence the parties submitted on this issue conflicted. We defer to the trial court on issues of credibility and do not reweigh the evidence. (*Falahati v. Kondo, supra*, 127 Cal.App.4th at p. 828.) Rather, we must resolve all ambiguities in favor of affirming the order. (*Ellis v. Toshiba America Information Systems, Inc.* (2013) 218 Cal.App.4th 853, 889.)

We presume the trial court resolved Hu's and Jwong's contradictory declarations in Hu's favor. Based on Hu's declaration, which is not " ' "unbelievable *per se*" ' " (*Oldham v. Kizer* (1991) 235 Cal.App.3d 1046, 1065), she intended the CIB loan to pay off all outstanding amounts she owed to Linkage, told Jwong to include the BL133011 loan in Linkage's demand for payment, and based on the amount paid to Linkage from the CIB loan—and Linkage's silence on the matter after escrow closed—believed she had settled her debt and Linkage had dismissed the lawsuit as she and Jwong had discussed.

The record supports the reasonableness of Hu's belief that she had paid off the BL133011 loan. Hu presented evidence that the December 12, 2016 demand letter Linkage sent to CIB for payoff of its loans purported to include the BL133011 loan. The first page of the Linkage demand letter to CIB references loan numbers "BL131603, BL120511[,] BL143604," the three loans Linkage argues were paid off through CIB's loan disbursement to Hu. The demand letter gives a "Deed of Trust Balance Total" of $510,000, rather than a principal amount for each of the loans. It also gives a total to be paid on accrued interest, legal fees, and late fees, rather than an itemized list of what was to be paid on each loan. The second page of the letter states Linkage's wire instructions. Those instructions refer to the BL133011 loan instead of BL143604 in the list of "payoff" loans.

Linkage argues Hu could not have been mistaken because the $510,000 total principal could only be reached by excluding the $240,000 BL133011 loan principal, but Hu declared Linkage never sent her the demand letter to approve it. The trial court could infer she did not see it at the time. The disbursements summary for the CIB loan from the escrow company states $719,106.42 was disbursed to Linkage for "PAYOFF LOAN BL131603R[,] BL120511[,] BL133011." It also listed $510,000

as the principal amount, but Hu declared she believed the $240,000 loan amount had been demanded and paid.

Linkage argues the demand letter's inclusion of the BL133011 number was a typographical error repeated by the escrow company. It probably was, but whether an error or an intentional omission, as Hu contends, is not for us to decide. Nevertheless, the court could determine the inclusion of the BL133011 loan number on the escrow statement, coupled with Hu's declaration that she asked Jwong to include all her loan debt in Linkage's demand and had not received the demand letter, resulted in Hu's extrinsic mistake that the loan had been paid off.

Moreover, Hu did not speak or read English. Her assistant —*the wife of Linkage's president*—translated legal documents for her. The court could infer Jwong knew Hu did not understand written English because he conversed with her in Mandarin Chinese. Hu declared she believed the court document she received in April 2017, months after the CIB loan closed, must have been the dismissal of the lawsuit as she believed she had paid the debt underlying it. She gave the document to Jwong's wife, but does not recall her assistant telling her it was notice of entry of a default judgment. Hu also declared Jwong told her he would dismiss the lawsuit after the CIB loan closed—paying off Linkage's claims—and she believed him.

Thus, the court could conclude Hu did not simply ignore the documents served on her, but that the individual whom she trusted to translate them did not tell Hu what they said. The court also could have found the relationship between Hu's assistant and Linkage suspect. Without a reporter's transcript, we do not know what findings the court made based on the parties' declarations. We assume any findings it made supported its order vacating the default judgment.

Nevertheless, Linkage contends that because it gave Hu notice of the lawsuit, default, and default judgment, she was not prevented from participating in the lawsuit and equitable relief therefore was not available to her, citing *Cruz v. Fagor America, Inc.* (2007) 146 Cal.App.4th 488, 503 (*Cruz*). There, the court of appeal reversed an order granting a foreign corporate defendant relief from default and default judgment. (*Id.* at pp. 492-493.) The court of appeal found the corporation was not precluded from participating in the lawsuit through its extrinsic mistake. (*Id.* at p. 506.) The defendant had received at least constructive notice of the lawsuit when plaintiff properly served it with the summons and complaint by mail, return receipt requested, and its employee who regularly received mail on its behalf had signed the return receipt. (*Id.* at pp. 492, 504-505.) The court concluded the fact the company's internal mail procedures "may have resulted in the misplacement of documents that the evidence establishes were delivered to the company [was] not a sufficient excuse" for its failure to defend the action. (*Id.* at p. 505.)

Cruz is distinguishable. The corporate defendant in *Cruz* could not establish its failure to respond was "through some error not attributable to its own handling of the matter." (*Cruz, supra*, 146 Cal.App.4th at p. 504.) But Hu presented evidence her error was the result of third parties' actions or inactions. She declared she did not defend the lawsuit because Jwong had agreed to dismiss it. If she had known Linkage had not submitted the BL133011 loan for payment from the CIB loan and "would continue to pursue this action," she would have defended the action before judgment was entered. And, as we have discussed, the trial court could conclude Linkage's failure to tell Hu about the typographical error, to tell her it was not dismissing the lawsuit because the BL133011 loan was not part of the payoff amount, and to make a separate demand to Hu to pay the

BL133011 loan effectively prevented Hu from participating in the lawsuit because she was lulled into believing the claim underlying the suit had been extinguished and Linkage had dismissed it. The court also could have inferred Hu's assistant did not translate the complaint and summons or entry of default, just as she did not tell Hu a default judgment had been entered against her, and concluded Hu reasonably relied on her assistant to translate legal documents properly.[5]

Substantial evidence also supports the trial court's implied finding that Hu had a meritorious defense. Hu presented evidence that Linkage deducted the first year of interest from the $240,000 loan principal at the time it made the loan. She also presented evidence that, five months into the loan, she had paid an additional $21,776.32 in interest at an 18 percent default rate. She argued the interest rate was usurious and that Linkage "inflated the demand amount numbers to actually include and hide th[e] BL133011 loan into the total demand amount." She also argued Linkage was estopped from " 'proving up' " the default judgment because it left Hu with the impression the CIB loan had paid off the BL133011 loan and never notified Hu it had not.

From this evidence, the court could conclude Hu had a defense as to the amount she owed Linkage. The court accepted Hu's proposed answer and deemed it filed and served as of the date of the hearing. The answer is not part of the appellate

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[5] Hu declared she did not receive the complaint until October 2016. She did not state whether she received notice that her default had been entered on August 30, 2016. The court could have inferred that it was included with what she received in October and that her failure to respond to the default was excusable based on her belief that she had resolved the debt underlying the complaint, as we have discussed.

record so we do not know what other defenses Hu asserted, but we presume the court considered them.

Finally, the evidence supports a finding that Hu did not delay in seeking relief from the entry of default and default judgment. Hu declared she did not learn that a default and default judgment had been entered against her until October 2017. She then "immediately hired" her attorney and "began to collect all the business records to file [her] motion to vacate the default and default judgment." She filed her motion on December 7, 2017, within two months after discovering the default and default judgment had been entered against her. This evidence supports a finding that Hu acted diligently to set aside the judgment after learning of it, particularly given her language barrier. (Compare *Cruz, supra*, 146 Cal.App.4th at pp. 494, 509 [no diligence where corporate defendant knew default had been requested and did not act for another nine months, almost six months after default judgment had been entered].)

On this record, we cannot say the trial court "exceeded the bounds of reason" when it vacated the default and default judgment entered against Hu.

DISPOSITION

The judgment is affirmed. Sylvia Hu is to recover her costs on appeal.

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EGERTON, J.

We concur:

EDMON, P.J.

DHANIDINA, J.